

### **REMARKS**

This Response is responsive to the Office Action mailed August 19, 2008 (hereinafter "Restriction Requirement").

#### **Restriction Requirement**

The Restriction Requirement asserted that the following are patentably distinct species and requested Applicants to elect one of the species:

Vitamin A, Vitamin B, Vitamin E, and Creatine.

Applicants respectfully traverse. This restriction requirement is surprising considering that (i) now cancelled claim 17 included relevant species that are now present in claims 12 and 30, and (ii) a restriction requirement and two office actions have already been issued in this application. Patent Rule 1.146 instructs:

In the first action on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application.

37 C.F.R. § 1.146 (emphasis added).

As this is the fourth action on an application, which already included the relevant species, Applicants respectfully assert that the restriction requirement is improper. Accordingly, Applicants respectfully request that the current restriction requirement be withdrawn.

If the Examiner maintains the Restriction Requirement, Applicants expressly take no further position as to the correctness of the Restriction Requirement. However, Applicants elect Vitamin A, because of the administrative requirement that an election be made under 37 C.F.R. § 1.142; MPEP § 818.03(b). Accordingly, claims 26-28 are withdrawn and claims 12, 18, 24, 30 are withdrawn in part, by this Response.

**Conclusion**

If anything further is necessary to properly respond to the Restriction Requirement, Applicants respectfully ask that the Examiner contact Greg Lefkowitz at 561-671-3624 (direct line). No fees are believed to be due for submission of this Response; however, the Commissioner is hereby authorized to charge any underpayment or credit any surplus to Deposit Account No. 50-0951.

Respectfully submitted,

AKERMAN SENTERFITT

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